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HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION NO. 1612 of 2005

Petitioner		Rajkumari, aged about 31 years, W/o Adwel Minj, D/o Sahbai Lohar, By Caste Agharia (Lohra), Sarpanch Gram Panchayat Kenwra, R/o Village Kenwra, P.S. & Tahsil Pratappur, District Sarguja (C.G.)
	Versus	
Respondent	1.	State of Chhattisgarh Through the Secretary, Panchayat Department, D.K.S. Bhawan, Raipur (C.G.)
	2.	Collector, Sarguja (C.G.)
	3.	Sub-Divisional Officer (R) Pratappur, Sarguja (C.G.)
	4.	Returning Officer Through Tahsildar Pratappur, Sarguja (C.G.)
	5.	Malti Devi W/o Chandi Prasad By Caste Gond, R/o Village Kenwra (Parvatipur), P.S. & Tahsil Pratappur, Sarguja (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench :- Hon'ble Shri Justice **Satish K. Agnihotri**

Present :- Shri D.N. Prajapti, Advocate for the petitioner.
Shri A.S. Kachhawaha, Govt. Advocate for the State/respondents No. 1 to 4.
Shri K.R. Nair, Advocate for the respondent No. 5.

O R D E R
(Passed on this 29th day of June, 2007)

1. By this petition, the petitioner challenges the legality and validity of the impugned order dated 11.4.2005 (Annexure P/1) passed by the Sub-Divisional Officer (R), Pratappur, District Surguja, whereby the election of the petitioner on the post of the Sarpanch, Gram Panchayat, Kenwra, Tahsil Pratappur, District Surguja was set aside and the respondent No. 5 was declared as elected Sarpanch, unopposed.

2. The indisputable facts, in nutshell, are that the post of the Sarpanch in Village Panchayat, Kenwra is reserved for Scheduled Tribes candidate (hereinafter referred to as "ST"). The petitioner, on the

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basis of his caste certificate produced by the State of Bihar and such being a member of ST community, filed nomination and despite the objection raised by the respondent No. 5, was allowed to contest the election and was declared as elected.

3. A complaint was filed to the Collector-cum-District Election Officer, Pratappur. On the basis of the said complaint, the matter was referred to the respondent No. 3/Sub-Divisional Officer (R), Pratappur for adjudication of the dispute asto whether the petitioner is a member of ST community or not. The respondent No. 3, relying on the basis of the report submitted by the Tahsildar and after having heard all the parties, held that the petitioner belongs to 'Lohara' community, which may be notified as ST in the State of Bihar, but it is not notified as ST community in the State of Chhhattisgarh. Thus, acceptance of nomination by the Returning Officer was bad and accordingly the election was set aside and the next candidate i.e. respondent No. 5 was declared as elected.

4. Being aggrieved, the petitioner has filed this petition on the ground that the dispute with regard to the caste of the petitioner cannot be decided either by the Sub-Divisional Officer or by any other Revenue authority.

5. Learned counsel appearing for the petitioner relies on a judgment and order passed by the Supreme Court in the case of **Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others**[1] and in the case of **State of Maharashtra & Ors. vs. Ravi Prakash Babulalsing Parmar & Anr.**[2].

6. Having heard learned counsel appearing for the parties, perusing the records and documents appended thereto, it is evident that the Revenue authorities have decided the caste of the petitioner without referring the matter to the Caste Scrutiny Committee.

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7. The Supreme Court in the matter of **State of Maharashtra & Ors. vs. Ravi Prakash Babulalsing Parmar & Anr.** (supra) observed as under :-

> "12. The Caste Scrutiny Committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purposes. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the superior courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence.
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> 13. Moreover the nature of evidence to be adduced would vary from case to case. The rights of a party to adduce evidence cannot be curtailed. It is one thing to say how a quasi-judicial body should appreciate evidence adduced before it in law but it is another thing to say that it must not allow adduction of oral evidence at all."

The Supreme Court has clearly held that the dispute with regard to the caste of a person can be decided by the Caste Scrutiny Committee alone. The Supreme Court has further given the procedure asto how the Caste Scrutiny Committee should decide the dispute. In view of well settled principle of law, the Sub-Divisional Officer (R), Pratappur has exceeded his jurisdiction in declaring the fact that the petitioner was not a Scheduled Tribe.

8. In view of the foregoing, the impugned order dated 11.4.2005 (Annexure P/1) passed by the respondent No. 3/Sub-Divisional Officer (R), Pratappur is set aside. The matter is remitted back to the Sub-Divisional Officer (R), Pratappur for deciding the matter afresh after decision on the caste of the petitioner by the Caste Scrutiny Committee. The Sub-Divisional Officer (R), Pratappur, is accordingly directed to refer the matter to the Caste Scrutiny Committee for their decision in accordance with law laid down by the Supreme Court in

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the case of **Kumari Madhuri Patil and another** (supra) and in the case of **State of Maharashtra & Ors. vs. Ravi Prakash Babulalsing Parmar & Anr.** (supra).

9. In view of the fact that the election has taken place on 23.1.2004 and this was set aside on 11.4.2005, whereby the respondent No. 5 has been declared as elected Sarpanch, unopposed, it is expected that the Caste Scrutiny Committee shall decide the dispute as early as possible, preferably, within a period of three months. The petitioner, in view of the dispute raised about his case, is not entitled to assume the office of the Sarpanch and the post of the Sarpanch of the Gram Panchayat, Kenwra may be kept as vacant. Appropriate steps be taken under the provisions of section 38 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 to fill up the post as an interim arrangement.

10. The writ petition is accordingly allowed and the matter is remitted back to the Sub-Divisional Officer (R), Pratappur for fresh adjudication in the light of the above-stated direction. There shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. (1994) 6 SCC 241
2. 2006 AIR SCW 6093